



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 160322276-6276-01]

RIN 0648-BF93

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Fishing Effort Limits in Purse Seine Fisheries for 2016

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim rule; request for comments.

SUMMARY: This interim rule establishes a limit for calendar year 2016 on fishing effort by U.S. purse seine vessels in the U.S. exclusive economic zone (U.S. EEZ) and on the high seas between the latitudes of 20° N. and 20° S. in the area of application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention). The limit is 1,828 fishing days. This action is necessary for the United States to implement provisions of a conservation and management measure adopted by the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC or Commission) and to satisfy the obligations of the United States under the Convention, to which it is a Contracting Party.

DATES: Effective on *[Insert date of publication in the FEDERAL REGISTER]*.

Comments must be submitted in writing by *[Insert date 30 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2016-0038, and the regulatory impact review (RIR) prepared for the interim rule, by either of the following methods:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0038*,
2. Click the “Comment Now!” icon, complete the required fields, and
3. Enter or attach your comments.

- OR -

- *Mail:* Submit written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, might not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name and address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Copies of the RIR, and the programmatic environmental assessment (PEA) and supplemental information report prepared for National Environmental Policy Act (NEPA) purposes are available at *www.regulations.gov* or may be obtained from Michael D. Tosatto, Regional Administrator, NMFS PIRO (see address above).

FOR FURTHER INFORMATION CONTACT: Tom Graham, NMFS PIRO, 808-725-5032.

SUPPLEMENTARY INFORMATION:

Background on the Convention

The Convention is concerned with the conservation and management of highly migratory species (HMS) and the management of fisheries for HMS. The objective of the Convention is to ensure, through effective management, the long-term conservation and sustainable use of HMS in the WCPO. To accomplish this objective, the Convention established the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Commission or WCPFC), which includes Members, Cooperating Non-members, and Participating Territories (collectively referred to here as “members”). The United States of America is a Member. American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI) are Participating Territories.

As a Contracting Party to the Convention and a Member of the Commission, the United States implements, as appropriate, conservation and management measures adopted by the Commission and other decisions of the Commission. The WCPFC Implementation Act (16 U.S.C. 6901 *et seq.*), authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the

United States Coast Guard is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the Commission. The WCPFC Implementation Act further provides that the Secretary of Commerce shall ensure consistency, to the extent practicable, of fishery management programs administered under the WCPFC Implementation Act and the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. 1801 *et seq.*), as well as other specific laws (see 16 U.S.C. 6905(b)). The Secretary of Commerce has delegated the authority to promulgate regulations under the WCPFC Implementation Act to NMFS. A map showing the boundaries of the area of application of the Convention (Convention Area), which comprises the majority of the WCPO, can be found on the WCPFC Web site at: www.wcpfc.int/doc/convention-area-map.

WCPFC Decision on Tropical Tunas

At its Twelfth Regular Session, in December 2015, the WCPFC adopted Conservation and Management Measure (CMM) 2015-01, “Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean.” CMM 2015-01 is the most recent in a series of CMMs for the management of tropical tuna stocks under the purview of the Commission. It is a successor to CMM 2014-01, adopted in December 2014. These and other CMMs are available at: www.wcpfc.int/conservation-and-management-measures.

The stated general objective of CMM 2015-01 and several of its predecessor CMMs is to ensure that the stocks of bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), and skipjack tuna (*Katsuwonus pelamis*) in the WCPO are, at a

minimum, maintained at levels capable of producing their maximum sustainable yield as qualified by relevant environmental and economic factors. The CMM includes specific objectives for each of the three stocks: for each, the fishing mortality rate is to be reduced to or maintained at levels no greater than the fishing mortality rate associated with maximum sustainable yield.

CMM 2015-01 went into effect February 6, 2016, and is generally applicable for the 2016-2017 period. The CMM includes provisions for purse seine vessels, longline vessels, and other types of vessels that fish for HMS. The CMM's provisions for purse seine vessels include limits on the allowable number of fishing vessels, limits on the allowable level of fishing effort, restrictions on the use of fish aggregating devices, requirements to retain all bigeye tuna, yellowfin tuna, and skipjack tuna except in specific circumstances, and requirements to carry vessel observers.

The provisions of CMM 2015-01 apply on the high seas and in EEZs in the Convention Area; they do not apply in territorial seas or archipelagic waters.

Paragraphs 20-27 of CMM 2015-01 require that WCPFC members limit the amount of fishing effort by purse seine vessels in certain areas of the Convention Area between the latitudes of 20° N. and 20° S. Paragraph 23 contains the relevant provisions for the U.S. EEZ, and paragraph 25 contains the relevant provisions for U.S. fishing vessels on the high seas.

Under Paragraph 23 of CMM 2015-01, coastal members like the United States are to “establish effort limits, or equivalent catch limits for purse seine fisheries within their EEZs that reflect the geographical distributions of skipjack, yellowfin, and bigeye tunas, and are consistent with the objectives for those species.” It further states, “Those coastal

States that have already notified limits to the Commission shall restrict purse seine effort and/or catch within their EEZs in accordance with those limits.” The United States has regularly notified the Commission of its purse seine effort limits for the U.S. EEZ since the limits were first established in 2009 (in a final rule published August 4, 2009; 74 FR 38544). Accordingly, the applicable limit for the U.S. EEZ is the same as that implemented by NMFS since 2009, which is 558 fishing days per year. Under paragraph 23 of CMM 2015-01, this limit is applicable from 2016 through 2017.

Paragraph 25 of CMM 2015-01 further provides that U.S. purse seine fishing effort on the high seas in 2016 be limited to 1,270 fishing days. It does not include limits for the years after 2016, instead stating that in 2016 the Commission will review the 2016 limits and agree on limits for later years.

The Action

This interim rule is limited to implementing CMM 2015-01’s provisions on allowable levels of fishing effort by purse seine vessels on the high seas and in the U.S. EEZ in the Convention Area, and only for 2016. The CMM’s other provisions are being implemented through one or more separate rules, as appropriate.

As in previous rules to implement similar Commission-mandated limits on purse seine fishing effort, this interim rule continues to implement the applicable limits for the U.S. EEZ (paragraph 23 of CMM 2015-01) and the high seas (paragraph 25 of CMM 2015-01) such that they apply to a single area, without regard to the boundary between the U.S. EEZ and the high seas. CMM 2015-01 has separate provisions for the high seas and the EEZ merely because they are subject to different management responsibility, and not because of different conservation and management needs or objectives for the two

areas. Specifically, CMM 2015-01 calls for fishing effort in EEZs to be limited by coastal States, and fishing effort in areas of high seas to be limited by flag States.

In this case, the United States is both a coastal State and a flag State and will satisfy its dual responsibilities by implementing a rule that combines the two areas for the purpose of limiting purse seine fishing effort. NMFS considered both the action alternative that would combine the two areas and another alternative that would not (see the PEA and the RIR for comparisons of the two alternatives). Because both alternatives would accomplish the objective of controlling fishing effort by the WPCFC-adopted amount (i.e., by U.S. purse seine vessels operating on the high seas and by purse seine vessels in areas under U.S. jurisdiction, collectively), and because the alternative of combining the two areas is expected to result in greater operational flexibility to affected purse seine vessels and lesser adverse economic impacts, NMFS is implementing the alternative that would combine the two areas. This combined area (within the Convention Area between the latitudes of 20° N. and 20° S.) is referred to in U.S. regulations as the Effort Limit Area for Purse Seine, or ELAPS (see 50 CFR 300.211).

The 2016 purse seine fishing effort limit for the ELAPS is formulated as in previous rules to establish limits for the ELAPS: the applicable limit for the U.S. EEZ portion of the ELAPS, 558 fishing days per year, is combined with the applicable limit for the high seas portion of the ELAPS, 1,270 fishing days per year, resulting in a combined limit of 1,828 fishing days in the ELAPS for calendar year 2016. This ELAPS limit for 2016, 1,828 fishing days, is identical to the limits established for 2014 and 2015.

The meaning of “fishing day” is defined at 50 CFR 300.211; that is, any day in which a fishing vessel of the United States equipped with purse seine gear searches for

fish, deploys a FAD, services a FAD, or sets a purse seine, with the exception of setting a purse seine solely for the purpose of testing or cleaning the gear and resulting in no catch.

As established in existing regulations for purse seine fishing effort limits in the ELAPS, NMFS will monitor the number of fishing days spent in the ELAPS using data submitted in logbooks and other available information. If and when NMFS determines that the limit of 1,828 fishing days is expected to be reached by a specific future date, it will publish a notice in the **Federal Register** announcing that the purse seine fishery in the ELAPS will be closed starting on a specific future date and will remain closed until the end of calendar year 2016. NMFS will publish that notice at least seven days in advance of the closure date (see 50 CFR 300.223(a)(2)). Starting on the announced closure date, and for the remainder of calendar year 2016, it will be prohibited for U.S. purse seine vessels to fish in the ELAPS (see CFR 300.223(a)(3)).

This interim rule is being issued without prior notice or prior public comment because of the unexpectedly high level of U.S. purse seine fishing effort in the ELAPS in 2016. The high level in 2016 was unexpected because the fleet did not receive licenses which are required for fishing in the South Pacific Tuna Treaty Area, which includes most of the ELAPS, until March 4. NMFS did not anticipate that U.S. purse seine vessels would concentrate fishing effort during the first two months of 2016 in small pocket areas of the ELAPS that are not part of the Treaty Licensing Area and do not require Treaty licenses to fish.

To satisfy the international obligations of the United States as a Contracting Party to the Convention, NMFS must establish the applicable limits for 2016 before they are exceeded, which, based on preliminary data available to date, NMFS expects could occur

as early as June of 2016. NMFS would not be able to establish the applicable limits for 2016 if it issued and considered public comments on a proposed rule prior to issuing a final rule. Nonetheless, NMFS will consider public comments on this interim rule and issue a final rule, responding to comments as appropriate.

Petition for Rulemaking and Advance Notice of Proposed Rulemaking

On May 12, 2015, as NMFS was preparing to publish the interim rule to establish the ELAPS limit for 2015 (published May 21, 2015; 80 FR 29220), NMFS received a petition for rulemaking from Tri Marine Management Company, LLC. The company requested, first, that NOAA undertake an emergency rulemaking to implement the 2015 ELAPS limits for fishing days on the high seas, and second, that NOAA issue a rule exempting from that high seas limit any U.S.-flagged purse seine vessel that, pursuant to contract or declaration of intent, delivers or will deliver at least 50 percent of its catch to tuna processing facilities based in American Samoa. On October 23, 2015, NMFS announced that it had denied the petition, but at the same time issued an advance notice of proposed rulemaking (ANPR) related to the subject of the petition (80 FR 64382). NMFS stated that it intends to examine the potential impacts of the domestic implementation of Commission decisions for purse seine fisheries on the economies of the U.S. Participating Territories, and examine the connectivity between the activities of U.S.-flagged purse seine fishing vessels and the economies of the territories. NMFS further stated that it will consider proposing regulations that mitigate adverse economic impacts of purse seine fishing restrictions on the U.S. Participating Territories, to the extent consistent with U.S. obligations under the Convention, and that it is considering proposing regulations that recognize that in the context of implementing Commission

decisions, fisheries associated with the U.S. Participating Territories are distinct from the purse seine fishery of the United States. In that case, the purse seine fisheries associated with the U.S. Participating Territories might be subject to special provisions of the Convention and of Commission decisions, and NMFS would implement those provisions and decisions accordingly.

NMFS' impact analysis is not completed and NMFS is not prepared to propose regulations of the types described in the ANPR. However, establishment through this interim rule of the limit of 1,828 fishing days for 2016 will not preclude NMFS from proposing at a later date regulations of the types described in the ANPR for 2016 or subsequent years.

Classification

The Administrator, Pacific Islands Region, NMFS, has determined that this interim rule is consistent with the WCPEFC Implementation Act and other applicable laws.

Administrative Procedure Act

There is good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment on this action, because prior notice and the opportunity for public comment would be contrary to the public interest. This rule establishes a limit on purse seine fishing effort for 2016 that is identical to the limits in place for 2014 and 2015. Affected entities have been subject to fishing effort limits in the affected area—the ELAPS—since 2009, and are expecting imminent publication of the 2016 fishing effort limits. Because the amount of U.S. purse seine fishing effort in the ELAPS so far in 2016 has been unusually high, it is critical that NMFS publish the limit for 2016 as soon as possible to ensure it is not exceeded and the United States complies with its international

legal obligations with respect to CMM 2015-01. Based on preliminary data available to date, NMFS expects that the applicable limit of 1,828 fishing days in the ELAPS could be reached as early as June of 2016. Delaying this rule to allow for advance notice and public comment would bring a substantial risk that more than 1,828 fishing days would be spent in the ELAPS in 2016, constituting non-compliance by the United States with respect to the purse seine fishing effort limit provisions of CMM 2015-01. Because a delay in implementing this limit for 2016 could result in the United States violating its international legal obligations with respect to the purse seine fishing effort limit provisions of CMM 2015-01, which are important for the conservation and management of tropical tuna stocks in the WCPO, allowing advance notice and the opportunity for public comment would be contrary to the public interest. NMFS will, however, consider public comments received on this interim rule and issue a final rule, responding to comments as appropriate.

For the reasons articulated above, there is also good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date for this rule. As described above, NMFS must implement the purse seine fishing effort provisions of CMM 2015-01 as soon as possible, in order to ensure that the applicable effort limits are not exceeded. These fishing effort provisions are intended to reduce or otherwise control fishing pressure on bigeye tuna, yellowfin tuna, and skipjack tuna in the WCPO in order to maintain or restore those stocks at levels capable of producing maximum sustainable yield on a continuing basis. Failure to immediately implement these provisions could result in excessive fishing pressure on these stocks, in violation of international and domestic legal obligations.

Executive Order 12866

This interim rule has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. Therefore, no regulatory flexibility analysis was required and none has been prepared.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: May 19, 2016.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart O—Western and Central Pacific Fisheries for Highly Migratory Species

1. The authority citation for 50 CFR part 300, subpart O, continues to read as follows:

Authority: 16 U.S.C. 6901 *et seq.*

2. In § 300.223, revise paragraph (a)(1) to read as follows:

§ 300.223 Purse seine fishing restrictions.

* * * * *

(a) * * *

(1) For calendar year 2016 there is a limit of 1,828 fishing days.

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[FR Doc. 2016-12345 Filed: 5/24/2016 8:45 am; Publication Date: 5/25/2016]